



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

July 28, 1959

Honorable H. D. Glover  
County Attorney  
Reeves County  
Pecos, Texas

Opinion No. WW-675

Re: Disposition of fees  
received by County Tax  
Assessor-Collector for  
performing assigned  
duties and for assessing  
and collecting taxes for  
Independent School District.

Dear Mr. Glover:

Your letter of May 22, 1959, requesting an opinion  
on the above subject, reads in part as follows:

"Please advise me whether or not the  
Tax Assessor-Collector in a county with a  
population of less than 20,000 who is com-  
pensated on a salary basis in the amount of  
\$6,215.00 and who acts as Tax Assessor-Col-  
lector for two Independent School Districts  
within the County is allowed to retain as  
fees of office an additional amount of 1%  
of current collections, 1% of assessments  
and 5% of redemptions from the Independent  
School Districts. Also whether or not the  
Tax Assessor and Collector would be allowed  
to retain either \$1.00 per line or 10% which-  
ever is lesser, from the State and County  
redemption payments.

"The facts briefly are as follows: The Tax  
Assessor and Collector is a separate office  
in this county and handles the assessment and  
collection of taxes for two separate Independent  
School Districts within the county. She de-  
posits all of the tax money for the two Inde-  
pendent School Districts and the State and  
County in one bank account and then periodically  
takes from the cash drawer, in cash, whatever  
the above figures or percentage would amount  
to, making no entry at any place as to the  
money that she takes.

"It is my opinion that she is not entitled  
to retain any of the above-mentioned moneys but

that they should all be reported and turned over to the County. . . ."

On June 18, 1959, we received an additional letter from you, as follows:

"This is a supplemental request to the above numbered file. Please advise me whether or not the Tax-Assessor and Collector can retain as her own personal funds the \$1.00 that is charged for issuing Tax Certificates.

"My opinion is that she cannot based upon the reasons as stated in my letter of May 22nd and under your file number above mentioned."

The fees which may be collected by a County Tax Assessor-Collector in performance of his duties are set forth in various Articles of Vernon's Civil Statutes, among which are the following which we assume to be those you inquire about:

(1) Article 7258, as amended, reading in part as follows:

"Section 1. On and after October 1, 1953, the Tax Collector or his deputy of any county in this State, or any city or political subdivision or tax assessing district within any such county shall, upon request, issue a certificate showing the amount of taxes, interest, penalty and costs due, if any, on the property described in said certificate. A charge of not to exceed One Dollar (\$1) may be made for each such certificate issued."

(2) Article 7331, as amended, reading as follows:

"For calculating and preparing redemption certificates and receipts, reporting and crediting redemptions, posting Comptroller's redemption numbers on the delinquent tax record or annual delinquent list, mailing certificates of redemption to taxpayers after approval by the Comptroller, and for issuing receipts or certificates of redemption for property shown on the annual delinquent list, the tax collector shall be entitled to a fee of One Dollar (\$1) for each correct assessment of land to be sold, except that if the total amount of said costs so per-

mitted exceeds ten per cent (10%) of the total amount of the taxes, interest and penalties due before assessing any such costs, then the total cost allowable shall be limited to ten per cent (10%) of such total amount of the taxes, interest and penalties, or One Dollar (\$1) whichever is the larger, said fee to be taxed as costs against the delinquent. . ."

Article 2792, V.C.S., as amended in 1945, provides that the Board of Trustees of an Independent School District, by majority vote, may require the County Tax Assessor-Collector to assess and collect, or to collect, only, its taxes. It also states "When the county assessor and collector is required to assess and collect the taxes on independent school districts they shall respectively receive one (1) per cent for assessing and one (1) per cent for collecting same;. . ." This is the only compensation currently provided a County Assessor-Collector who assesses and collects independent school district taxes.

We are enclosing a copy of Attorney General's Opinion No. S-76, holding that the fees collected by the Tax Assessor-Collector, who is on a salary basis, for the issuance of tax certificates under Article 7258a, V.C.S., should be deposited in the Officers' Salary Fund.

The fees collected under Article 7331 should likewise be paid into the Salary Fund. Article 3912e, V.C.S., Section 5, provides as follows:

"Sec. 5. It shall be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all official service performed by them. As and when such fees are collected they shall be deposited in the Officers' Salary Fund, or funds provided in this Act. . ."

Section 3 of that same Act provides that, where county officers are compensated on a salary basis,

". . .such officers shall receive said salary in lieu of all other fees, commissions or compensation which they would otherwise be authorized to retain; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the benefit

of the Officers' Salary Fund or funds hereinafter provided for all fees and commissions which he is authorized under law to collect; and it shall be his duty to account for and to pay all such monies received by him into the fund created and provided for under the provisions of this Act, . . ."

Article 3883(i)(Acts 1955, 54th Leg., p. 1137, ch.427) provides in Section 1 as follows:

"In each county in the State of Texas having the population of less than twenty thousand (20,000) inhabitants according to the last preceding Federal Census where all county and district officials are compensated on a salary basis, the Commissioners Courts shall fix the salaries of the officials named in this Act at not more than Six Thousand, Seven Hundred and Fifty Dollars (\$6,750.00) per annum; provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act."

(According to the 1950 Federal Census the population of Reeves County was 11,745.)

The assessor and collector of taxes is named in Section 6 as one of the officials to whom Section 1 applies.

Section 14 provides that, "All of the fees and commissions earned and collected by the officials named in this Act shall be paid into the County Treasury in accordance with the provisions of Section 61 of Article XVI of the Constitution of Texas."

The cited Section of the Constitution provides in part that "all fees earned by district, county and precinct officers shall be paid into the county treasury where earned for the account of the proper fund, . . ."

For earlier cases dealing with the accountability of fees earned under this article, as fees of office under Maximum Fee Bill, see Burke v. Bexar County, 271 S.W. 132 (Tex.Civ.App., 1925), err. ref'd. and Cameron County v. Fox, 42 S.W.2d 653, aff'd. Com.App., 61 S.W.2d 483, Reh.Den., Com.App., 64 S.W.2d 140. See also Attorney General's Letter Opinion on Request R2094, a copy of which is enclosed.

As to fees paid under Article 2792: In Nichols v. Galveston County, 111 Tex. 50, 228 S.W. 547 (1921), the

appellant County Assessor contended that fees paid him for assessing and collecting independent school district taxes were for ex officio service and as such not accountable as fees of office. In overruling this contention, the Court said (p.549):

"After the statutes were enacted providing for drainage districts and independent school districts, and that when ordered to do so by the properly constituted authority the county assessor of taxes shall assess these taxes, the assessment of such taxes by him become the usual and general duties of his office; and the performance of these duties by him is made mandatory."

The same reasoning would apply to the collection of these taxes.

It was therefore held that such fees were accountable as fees of office. (We note in passing that officers receiving a salary are specifically prohibited from receiving any ex officio compensation by Sec. 6(b) of Art. 3912e. Sec. 11 of Art. 3883i provides, however, three instances in which extra compensation may be paid, none of which are material here.)

The Nichols case was cited by the court as controlling authority in Taylor v. Brewster County, 144 S.W.2d 314 (Tex. Civ. App., 1940), err. ref'd., which held appellant County Tax Assessor-Collector was acting as an officer of the County in collecting taxes for independent school districts under Art. 2792, and therefore his fees for such service were accountable as official fees. The theory and intent of a salary basis of compensation for county officers, as opposed to a fee basis, are well expressed in Attorney General's Opinion No. 0-3664, from which we quote:

"In a salary county the fees to which the officer would be entitled personally if he were on the fee system belong to the county. The officer must collect them for the county and place them in the Officer's Salary Fund. It was clearly contemplated by the Legislature that the salaries of county officers should be paid largely from fees of office deposited in the Officers' Salary Fund."


#### SUMMARY

A County Tax Assessor-Collector who is compensated on a salary basis must account

for and turn over to the County the fees collected under Articles 7258a and 7331, V.C.S., and also the 1% of assessments and 1% of collections provided by Art. 2792, V.C.S., for assessing and collecting independent school district taxes.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
James R. Irion  
Assistant

JRI:cm

APPROVED:

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